

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. NOR. 42108**

227691

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**THE SPRINGFIELD TERMINAL RAILWAY COMPANY  
PETITION FOR DECLARATORY ORDER**

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**VERIFIED REBUTTAL STATEMENT OF PETITIONER  
THE SPRINGFIELD TERMINAL RAILWAY COMPANY**

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(207) 282-1527**

**Dated: August 25, 2010**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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Petitioner Springfield Terminal Railway Company ("STRC") submits this Verified Rebuttal Statement in response to Respondent Fore River Warehousing and Storage Company, Inc.'s ("Fore River") Verified Reply Statement.<sup>1</sup>

**INTRODUCTION**

On July 7, 2008, STRC filed a Petition for Declaratory Order ("Petition"), seeking to have the Surface Transportation Board (the "Board") resolve a dispute over 2006 demurrage charges that STRC assessed against Fore River.<sup>2</sup> STRC's initial Petition attached a copy of the underlying pending Complaint filed on April 29, 2009 in United States District Court for the District of Maine (the "Complaint"). Attached to the Complaint were STRC's Freight Tariff ST 6004-A (2005) (the "STRC Tariff") and Demurrage Invoices dated June 8, 2006, July 14, 2006,

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<sup>1</sup> This rebuttal statement cites the factual record of depositions, exhibits, and documents produced in discovery.

<sup>2</sup> Contrary to Fore River's assertion, a review of the Petition and the attached Complaint reflects that the Petition currently before the STRC always was limited to 2006 demurrage charges and did not include 2004 demurrage charges.

August 4, 2006 and September 15, 2006. The Board has treated the Petition and accompanying materials as STRC's opening evidence. Presently before the Board are demurrage charges for railcars delivered to Fore River during the period of April 29, 2006 through August 2006 totalling \$108,900.00.

### **FACTS**

Fore River owns and operates a warehouse facility located in Portland, Maine. (Deposition of Michael Bostwick attached to Fore River's Reply Statement as Exhibit A at 10, 12, hereinafter cited as "Fore River Ex. A at \_\_\_\_"); Deposition of Richard P. McCallum, III attached to Fore River's Reply Statement as Exhibit B at 18, hereinafter cited as Fore River Ex. B at \_\_\_\_). Customers ship goods to Fore River by various modes of transportation, including rail. (Fore River Ex. B at 15-16). As a rail carrier, STRC delivers goods to Fore River for storage, and picks them up for shipment to their final destinations, in accordance with its customer's instructions. (Fore River Ex. A at 11-13). This dispute centers around railcars sent to Fore River by International Paper ("IP") containing primarily roll paper from IP's mills located in Bucksport and Jay, Maine. (Fore River Ex. A at 8-9). For over 30 years, IP has directed rail shipments to and from Fore River. (Ex. A at 10-11).

The relationship between IP and Fore River is documented in a Warehouse Operating Agreement dated June 1, 2003. (Fore River Reply Statement, Exhibit F). Pursuant to the terms of the Warehouse Operating Agreement, Fore River is obligated to provide space and services as demanded by IP, subject only to space availability at its Fore River facility (Fore River Ex. F at 2). The Warehouse Agreement does not give Fore River the option to reject shipments from IP.

In short, Fore River's failure or refusal to accept railcars from IP would be an apparent breach of the terms of the Agreement.

There is no dispute that IP directs the shipments to and from Fore River. (Fore River Ex. A at 10-11). IP creates the bill of lading (Fore River Ex. A at 10). IP decides when it wants to move cars on STRC's tracks, how many cars it wants to move, where it wants the cars to go and what is in the cars. (Fore River Ex. A at 10-11). As a common carrier, STRC has an obligation to move IP's traffic at its request and direction. (Fore River Ex. A at 14).

The volume of railcar traffic from IP depends upon the volume of business at IP's facilities. (Fore River Ex. B at 23). Beginning in April 2006, IP directed that STRC start placing increased quantities of railcars carrying roll paper at Fore River. (Fore River Ex. A at 118-119, Fore River Ex. B at 35, Fore River Ex. C at 13). During 2006, STRC provided an average of three "switches" per week up to a maximum of five per week, in which STRC would take away cars that had been unloaded by Fore River. (Fore River Ex. A at 97-98, Fore River Ex. B at 31, Fore River Ex. C at 51). In May, however, in response to the increased quantities of railcars delivered to Fore River, STRC increased its switches. During the month of May, 21 switches were performed. (Fore River Ex. A at 123). Despite the increased switches, a railcar backlog continued. (Fore River Ex. H).

At its Portland facility, Fore River has an 18 railcar capacity siding for unloading and loading cars. (Fore River Ex. B at 18, 27; Fore River Ex. C at 49). With an 18 car siding at Fore River, there was sufficient capacity on the rail side if Fore River had the capacity at their warehouse to throughput all the volume IP was providing to Fore River. Since Fore River has an inbound throughput capacity of 18 railcars per day, Fore River could have achieved a total of 378 railcars, thereby alleviating a large portion of its backlog. However, records show that Fore

River achieved a throughput of only 243 railcars during the month of May, 2006. (Springfield Terminal Railway Company's Answers to Interrogatories, Response 10, attached hereto as STRC Ex. A; Fore River Ex. H).

In response to the backlog of approximately 100 railcars at the Fore River facility, on May 30, 2006, STRC took the extreme measure of imposing an embargo on further railcar deliveries to Fore River jeopardizing STRC's relationship with IP. (Fore River Ex. A at 101). Despite having imposed an embargo, STRC remained unwavering in its willingness to assist Fore River in reducing the number of backlogged railcars including offering to provide switching services on a seven day per week basis. (Fore River Ex. A at 54, Fore River Ex. H). Fore River rejected STRC's offer. (Fore River Ex. H). IP also explored options to reduce the number of railcars sent to Fore River. Nevertheless, despite STRC and IP's offered assistance, Fore River continued to refuse to expand its hours of operations necessary to reduce the backlog of railcars. (Id.).

Given the large backlog of railcars present at Fore River's facility throughout the spring and summer of 2006, STRC submitted demurrage calculation sheets to Fore River under a series of cover letters, dated June 8, July 14, August 4 and September 15, 2006. Each letter informed Fore River of its total demurrage charges for the preceding month and requested that Fore River review the demurrage calculation sheets and contact STRC concerning any discrepancies. Each cover letter further provided that if STRC did not hear from Fore River within 10 days, STRC would assume that Fore River was in agreement with the demurrage calculations and issue an invoice for the demurrage. (The cover letters dated June 8, July 14, August 4 and September 15, 2006 and the corresponding demurrage calculation sheets and invoices are attached to STRC's Petition and Complaint as Ex. B. See also Fore River Ex. B, Dep. Ex. 2, 3, 4, 5). The total 2006

demurrage charges assessed to Fore River in the four invoices total \$114,960.00. The Board previously has granted partial summary judgment to Fore River reducing the amount owed to \$108,900.00.

The demurrage charges owed to STRC were calculated in accordance with STRC's Tariff. (A copy of the Tariff is attached to the Petition and Complaint as Ex. A. See also Fore River Ex. B, Dep. Ex 1). As a customer of STRC, the Tariff would have been sent to Fore River. (Fore River Ex. A at 61). Pursuant to the terms of STRC's Tariff, Fore River was allowed two days to unload freight without incurring demurrage charges. In calculating the demurrage charges, not only was Fore River provided a two day credit for each railcar delivered, but Fore River also received allowances for any missed switches. (Fore River Ex. A at 93). In calculating the allowances for missed switches, STRC erred to the benefit of Fore River. (Fore River Ex. A at 89, 92-93).

In addition to defining the mechanism for the calculation of demurrage, the STRC Tariff also provided a mechanism for relief from demurrage charges that were improperly calculated. The STRC Tariff provided that in order to be provided relief, Fore River was required to submit a written claim to STRC by the last day of the calendar month following the month in which the bill was issued, stating fully the conditions for which relief was claimed. (Petition and Complaint Ex. A, Item 20; Fore River Ex. B, Dep. Ex.1). Fore River never submitted any written claim disputing STRC's demurrage calculations.

## ARGUMENT

### **I. Fore River is Liable for Demurrage Charges in the Amount of \$108,900.00**

#### **Because it is a Named Consignee and Because of Other Factors Present in the Parties' Business Dealings.**

Under well established case law, Fore River, as consignee, is presumptively liable for demurrage charges arising from unloading delays, unless Fore River accepted the freight as the agent of another and notified the carrier of its status in writing prior to delivery. CSX Transportation Company v. Novolog Bucks County, 502 F.3d 247 at 250 (3<sup>rd</sup> Cir. 2007). In Novolog, the fact that the consignee did not give its permission to be designated as a consignee or that it did not have a beneficial interest in the freight was irrelevant. Id. At 254, 257-258. In reaching its decision, the Third Circuit Court explained that its decision was based upon “two well-established and oft-repeated principles.” The Third Circuit recognized first that liability for freight charges, including demurrage charges, may be imposed against a consignor, consignee or owner of the property, or on others by statute, contract or prevailing custom. Citing Illinois Cent. R.R. Co. v. South Tec Dev. Warehouse, 337 F.3d 813, 820 (7th Cir. 2003); Middle Atl. Conference v. United States, 353 F.Supp. 1109, 1118 (D.D.C. 1972). The second principle recognized by the Third Circuit is that the consignee becomes a party to the transportation contract and is therefore bound by it, upon accepting the freight; thus it is subject to liability for the transportation charges even in the absence of a separate contractual agreement or relevant statutory provision. Citing Louisville and Nashville Ry. Co. v. Central Iron and Coal Co., 265 U.S. 59, 70 (1924); Erie R. Co. v. Waite, 62 Misc. 372, 14 N.Y.S. 115 (1909). (demurrage may be imposed upon consignees independently of statute or express contract); Gagne v. Morse, 12

Allen 410, 90 and Am. Dec. 155, 1866 WL. 6378 (Mass. 1866) (“[i]f the consignee will take the goods, he adopts the contract. CSX v. Novolog, 502 F.3d at 254-55.

Novolog argued that the shipper’s unilateral decision to designate it as a consignee, without its permission and where it was not the ultimate consignee of the freight, could not establish its status as a consignee for privileges of demurrage liability under 49 U.S.C. §10743 or otherwise. The Third Circuit disagreed for three reasons. First, it noted that nothing in the statutory language suggested that it intended to restrict the term “consignee” to the ultimate consignee of the freight or to use it to mean anything other than the person to whom the bill of lading authorized delivery and who accepted the delivery. Second, the Third Circuit recognized that to find that the documented designation of an entity as a consignee and that entity’s acceptance of the freight as insufficient to hold it presumptively liable for demurrage charges would frustrate the plain intent of the statute, which was to establish clear, easily enforceable rules for liability. Third, the Court rejected as unpersuasive the middleman’s argument that it would be inequitable to treat the named consignee as presumptively liable. CSX v. Novolog, 502 F.3d at 257.

In reaching its decision, the Third Circuit specifically declined to follow the Seventh Circuit Court decision in Illinois Central Railroad Company v. South Tec Development Warehouse, holding that being listed by a third party as a consignee on some bill of lading is not alone enough to make a middleman a legal consignee. 337 F.3d at 821. In rejecting the decision, the Third Circuit noted that the Seventh Circuit had left open the possibility that a consignee designation coupled with other factors might be enough. CSX v. Novolog, 502 F.3d



at 260. In remanding the case to the lower court to determine if the warehouse was a consignee, however, the Seventh Circuit left open what other factors it would deem sufficient.<sup>3</sup>

In this case, there is no dispute that Fore River was named as the consignee on all bills of lading originating from IP's Bucksport mill. See Fore River Reply Brief at 19 ("In fact, IP did unilaterally list Fore River as the consignee on the BOLs related to shipments from IP's Bucksport Mill...") (Fore River Ex. A at 70, 72-73, Dep. Ex. 9). While admittedly the bills of lading from IP's Jay Mill in some instances listed Fore River as a co-consignee along with IP and in others listed IP c/o Fore River as the consignee (Fore River Ex. A, Dep. Ex. 10), that alone does not relieve Fore River of its obligation to pay demurrage.<sup>4</sup>

For over 30 years, Fore River has received railcars from STRC originating from IP's mills. (See Fore River Reply Brief at 5; See also Fore River Ex. A at 10-11). Unlike the middleman in Norfolk v. Groves, Fore River had express knowledge of the origins of the freight it handled. See Norfolk v. Groves, 586 F.3d at 1276. In fact, Fore River had a direct contractual relationship with the consignor. Its Warehouse Operating Agreement required that Fore River "provide space and services as demanded from time-to-time by IP, subject only to space availability at the Warehouse Facilities." (Fore River Ex. F). In short, Fore River had the ability if it so desired, to directly request that IP, the consignor, either divert or delay the delivery of further railcars to its facility. For apparent business reasons or because of a concern that to do so would be a breach of the Warehouse Operating Agreement, Fore River elected not to threaten its

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<sup>3</sup> But see Norfolk v. Groves 586 F.3d 1273 (11<sup>th</sup> Cir. 2009). In Norfolk, the 11<sup>th</sup> Circuit held that a middleman who is designated by a bill of lading as a consignee, but who has no notice of such designation is not liable for demurrage. Norfolk is easily distinguishable by the facts of this case.

<sup>4</sup> The demurrage charges arising from railcars originating from IP's Jay facility only accounts for 39% or \$42,360.00 of the total demurrage charges at issue in this case.

relationship with IP by making such a request, choosing instead to force STRC to issue an embargo on May 30, 2006. (Fore River Ex. K).

The Federal Bills of Lading Act and STRC's Tariff define consignee in a consistent manner. See 49 U.S.C. §80101 (1) (1994) (" 'consignee' means the person named in a bill of lading as the person to whom the goods are to be delivered."); STRC Tariff Item 20 ("the party to whom the shipment is consigned, or the party entitled to receive the shipment."). With respect to all of the shipments from IP, Fore River was the party entitled to receive the shipment. (Fore River Ex. A at 40, 55, 62-53). Unlike the arrangement in Norfolk v. Groves, no ultimate consignee was designated in the bills of lading. See Norfolk v. Groves, 586 A.2d at 1276. In all instances, Fore River was the destination receiver of the shipped product. (Fore River Ex. A at 63).

Since at least 2003, Fore River knew that STRC intended to assess demurrage charges against Fore River. (Fore River Ex. C at 33). While Fore River disputed the demurrage charges, at no time did it avail itself of the disclosed agent procedure set forth in 49 U.S.C. §10734(a)(1) nor did it reject railcars until it received confirmation that it was not a consignee for demurrage purposes. As the Third Circuit has recognized, compliance with the statutory disclosed agency relationship requirements is not burdensome. Fore River was obligated merely to notify STRC, in writing, of the agency relationship. See CSX v. Novolog, 502 F.3d at 256, 259 ("For their part, recipients of freight who should not be saddled with liability for transportation charges arising after delivery can escape it with little effort by simply providing written notice of their status to the carrier."). Despite knowledge for at least three years that STRC looked to Fore River for demurrage charges, Fore River has produced no evidence that it ever provided written

notices to STRC that it was acting solely as an agent of IP and as such was not liable for demurrage.

Given the facts of this case, Fore River must be held accountable for demurrage charges either solely on account of it being named consignee on the bills of lading or because of the numerous “other factors” prevalent in the relationship between IP, STRC and Fore River:

- Fore River’s longstanding prior notice that STRC considered Fore River responsible for demurrage charges.
- Fore River’s acceptance of railcars with knowledge that STRC considered it responsible for demurrage.
- Fore River’s failure to comply with the 49 U.S.C. §10734 disclosed agency procedure.
- Fore River’s contractual agreement with IP obligating it to provide services as demanded by IP subject only to space availability at its warehouse facilities.
- Fore River’s failure to request that its client, IP, divert or slow down deliveries of railcars to Fore River.

## **II. STRC’s Demurrage Charges are Reasonable.**

The right to assess demurrage charges against parties to a transportation contract for delay in releasing transportation equipment is well established at common law. Norfolk v. Groves, 586 F.3d at 1276. Demurrage has long been considered part of the transportation charge and under the tariff system is imposed as a matter of law. Id. at 1278. See also S. Pac. Transp. Co. v. Matson Navigation Co., 383 F.Supp. 154, 156 (N.D. Cal. 1974) (“The obligation to pay

demurrage arises either out of contract, statute or prevailing custom”). As this Board has recognized, demurrage charges are subject to Board regulation under 49 U.S.C. §10702, which requires railroads to establish reasonable rates and transportation-related rules and practices. In addition, 49 U.S.C. §10746 directs rail carriers to compute demurrage charges and establish rules related to those charges in a way that would facilitate freight car use distribution and promote an adequate car supply. Savannah Port Terminal Railroad, Inc. Petition for Declaratory Order, STB Finance Docket No. 34920, Decision at 2 (Decided May 29, 2008).

The STRC Tariff pursuant to which the charges were assessed in this case is a typical demurrage tariff that is common throughout the rail industry. See Id. at 9. Pursuant to STRC’s Tariff, Fore River was allowed two days to unload freight without incurring demurrage. Credits were calculated by multiplying the number of railcars delivered during a particular month by two, which accounted for the two “free” days all customers are given to unload delivered railcars. When the total demurrage exceeded the total credits, the days were charged at the daily rate published in STRC’s Tariff. (STRC Petition and Complaint at Ex. A, Fore River Ex. B, Dep. Ex. 1; Fore River Ex. A at 21). STRC’s method of calculating demurrage is customary in the industry. See e.g. Norfolk v. Groves, 586 F.3d at 1275-76.

Under 49 U.S.C. §11101, a rail carrier has an obligation to provide transportation or service upon reasonable request. That obligation includes dropping off loaded cars and picking up unloaded cars. Savannah Port Terminal Railroad at 8. Fore River’s self serving assertion that the backlog was caused solely by IP either delivering too many railcars or STRC missing switches is self-serving at best. It is this same position, that it was a victim and not a part of the problem or solution, that led to the railcar backlog in the first place. As the Board has recognized there is no set rule establishing the number of switches a rail carrier is required to

provide. Rather, the Board looks to what is reasonable under the circumstances. Id. As previously noted, during May 2006, STRC performed 21 switches at Fore River. STRC's offer to provide switches seven days a week until the backlog had been resolved was expressly rejected by Fore River. (Fore River Ex. H). STRC has acknowledged that missed switches, while the exception, unfortunately can occur. For example, on June 2, 2006, track conditions at Fore River caused a derailment preventing STRC from switching Fore River for two days. (Fore River Ex. H). In any event, in calculating demurrage STRC provided allowances to Fore River to offset any missed switches. In applying such allowances, STRC erred to the benefit of Fore River. (Fore River Ex. A at 89, 92-93).

Under the Interstate Commerce Act, Fore River as the party challenging demurrage charges on the basis of missed switches, has the burden of establishing by competent evidence that collection of the demurrage is unlawful. The fact that STRC, pursuant to a Court Order has instituted this Declaratory Petition does not relieve Fore River of its obligation to meet its burden of proof as to the merits of its claim. Savannah Port Terminal Railroad at 8, 20. Moreover, the STRC Tariff provides the methodology for Fore River to challenge the demurrage calculations. Fore River did not submit any written claims to STRC disputing its calculation of the demurrage charges, presumably because Fore River recognized that the charges were correctly calculated. In fact, when presented with the May demurrage, Fore River confirmed that the demurrage charges were accurate. (Fore River Ex. B at 45-47). Fore River did not dispute the amount of the demurrage because it had no basis to dispute STRC's calculation of demurrage.

Fore River also cannot dispute that assessing demurrage for the backlog of railcars at its facility served the purpose of demurrage. This Board and the Federal Courts that have addressed the issue consistently have recognized that demurrage serves two functions. First, demurrage

encourages the efficient use of railcars in the rail network by providing a deterrent against undue car detention. Second, demurrage compensates rail carriers for the expenses incurred when railcars are detained beyond a period of “free time.” Savannah Port Terminal Railroad at 10-11; Norfolk v. Groves, 586 F.3d at 1276.

Demurrage charges are properly assessed even if the cause for the delay is beyond the middleman’s control, unless the carrier itself is responsible for the delay. Norfolk v. Groves, 586 F.3d at 1276. Simply put, Fore River cannot establish that the cause for the railcar backlog and the resulting demurrage was STRC’s failure to provide necessary switches. If the switches did not happen Fore River received proper allowances. (Fore River Ex. A at 89, 92-93). Fore River claims that it was operating at maximum capacity. Assuming that was the case, if Fore River wanted to avoid demurrage, it should have been more proactive regarding its inability to handle IP’s volume of delivery. Fore River made a business decision to continue to accept the high volume of railcars to maintain its business relationship with IP. At no time did Fore River express to STRC or IP that it was unable to handle the amount of railcars coming in to its facility. Rather, it allowed STRC to provide a moving warehouse at its facility until it could unload the railcars. The fact that Fore River could not charge IP until the railcars were unloaded is irrelevant. The backlog of railcars guaranteed Fore River business well into the future at STRC and the rail systems’ expense. (Fore River Ex. A at 50, 53, 55.)<sup>5</sup>

In short, the assessment of demurrage charges by STRC is consistent with the expressed purposes of demurrage. Moreover, STRC was not responsible for any delays. In those exceptional circumstances where it missed a switch, Fore River received proper allowances reducing the demurrage.

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<sup>5</sup> STRC’s argument that it should not be charged demurrage because a percentage of the cars were being loaded also is irrelevant to the calculation of demurrage charges. While admittedly STRC was able to charge IP for loaded back shipped cars, Fore River also profited from the reloading of railcars.

### CONCLUSION

For the above stated reasons, Petitioner respectfully request that the Board declare that:

1. STRC may assess, impose and collect demurrage charges against Fore River in the amount of \$108,900.00; and
2. STRC's demurrage rates and/or charges are reasonable and/or serve the purposes set forth in 49 U.S.C. §10746; and
3. The manner in which STRC calculates its demurrage charges is reasonable and/or serves the purposes set forth in 49 U.S.C. §10746; and
4. The rules and/or practices pursuant to STRC's imposition of demurrage charges are reasonable and/or serve the purposes set forth in 49 U.S.C. §10746; and
5. STRC was not responsible for the delay or backup of railcars; and
6. All railcars were subject to demurrage charges; and
7. STRC's switching services complied with 49 U.S.C. §11101.

DATED at Saco, Maine this 25th day of August, 2010.

SMITH ELLIOTT SMITH & GARMEY,

BY: 

Keith R. Jacques, Esq.

Attorney for Petitioner

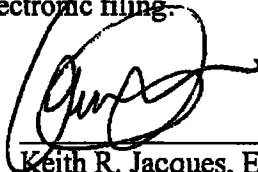
Springfield Terminal Railway Company

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served copies of the foregoing Springfield Terminal Railway Company's Verified Rebuttal Statement on all parties of record in this proceeding, by furnishing a copy to Daniel L. Rosenthal, Attorney for Fore River, Marcus, Clegg & Mistretta, One Canal Plaza, Suite 600, Portland, ME 04101 via electronic mail this 25th day of August, 2010, per agreement of the parties to use electronic filing.

Dated: August 25, 2010

A handwritten signature in black ink, appearing to read 'Keith R. Jacques', is written over a horizontal line.

Keith R. Jacques, Esq.  
Attorney for Petitioner  
Springfield Terminal Railway Company



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. NOR 42108**

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**THE SPRINGFIELD TERMINAL RAILWAY COMPANY  
PETITION FOR DECLARATORY ORDER**

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**PETITIONER SPRINGFIELD TERMINAL RAILWAY  
COMPANY'S ANSWERS TO INTERROGATORIES**

Petitioner Springfield Terminal Railway Company ("Springfield Terminal") answers Respondent Fore River Warehousing and Storage Co., Inc.'s ("Fore River") Interrogatories as follows:

**INTERROGATORIES**

1. Identify each person answering, or assisting with answering these Interrogatories.

ANS. Michael Bostwick, Senior Vice President, Marketing & Sales, Pan Am Railways/Springfield Terminal Railway Company.

2. Identify each person having knowledge relating to any allegation in your Petition and Complaint, and for each person, state the substance of that person's knowledge.

ANS. See attached documents which list the various individuals from the Shipper, Consignee (Fore River) and the Railroad (Springfield Terminal Railway). These documents include numerous e-mail correspondence and letters exchanged between the parties.

3. Identify all persons you believe are or may be witnesses or who may have knowledge of the facts and circumstances or who may have knowledge pertinent to any allegation in your

Petition and Complaint. As to each, please summarize the information you believe each person possesses.

ANS. See Response to Interrogatory #2.

4. Identify, state and describe the basis for your assertion that the Demurrage Charges can be assessed, imposed or collected against Fore River. Include in your answer any basis upon which you assert that Fore River ever agreed, expressly or implicitly, to be liable for the Demurrage Charges.

ANS. Springfield Terminal contends that the Demurrage Charges assessed against Fore River can be imposed based on the fact that the rate quotes which govern the traffic handled by Fore River are subject to the provisions of GTI Exempt Boxcar Circular No. 1. Item 6 of the Circular provides for the adoption of Rates and Charges including Demurrage provisions. Springfield Terminal asserts that Fore River implicitly agreed to be liable for Demurrage Charges based on Fore River's willingness to enter into arrangements with certain shippers to handle traffic consigned to Fore River. As consignee for the traffic, Fore River is the party responsible for the payment of any demurrage charges which accrue. A copy of ST 6004-A is attached.

5. State whether you have made any effort to collect the Demurrage Charges from any other party. If your answer is affirmative, identify state and describe:

- a. The identity of the party from whom you attempted to collect the Demurrage Charges;
- b. The details of your effort to collect the Demurrage Charges, including dates and descriptions of communications; and
- c. The results of your effort to collect the Demurrage Charges;

ANS. Springfield Terminal has not attempted to collect demurrage for the shipments in question from any other party.

6. Identify, state and describe all communications between STRC and Fore River relating to the Demurrage Charges.

ANS. See documents produced in Response to Interrogatories #2 and 3. See also attached documents which include the unpaid demurrage from 2003, 2004 and 2006 plus the corresponding demurrage bills with car by car detail.

7. Identify, state and describe the basis for your contention, including without limitation the contention in paragraph 12 of your Complaint, that Fore River was a consignee with respect to the shipments or railcars as to which STRC seeks to collect the Demurrage Charges.

ANS. See Response to Interrogatory #4. Attached are examples which demonstrate that Fore River Warehouse was the consignee. For shipments from International Paper, Bucksport, ME the electronic BOL/404 shows Fore River as the "Consignee Name". In addition, a copy of Springfield Terminals' waybill shows Fore River as the consignee. For shipments from International Paper, Rileys, ME, a hard copy BOL (IP Rileys was not transmitting electronic BOL/404's like their sister mill Bucksport) also shows Fore River on the "Consignee Name". Springfield Terminal's waybill also shows Fore River as the consignee.

8. Identify all parties that decided when each shipment or railcar, as to which STRC seeks to collect the Demurrage Charges, would be tendered, notified, placed (actually or constructively) or delivered to Fore River.

ANS. International Paper (Origins: Bucksport, ME and Rileys, ME) decided when each shipment would be tendered to Springfield Terminal. Springfield Terminal was responsible for

notifying Fore River of availability of railcars. Springfield Terminal also was responsible for actually and/or constructively placing or delivering railcars to Fore River.

9. Identify any party that decided how many of the shipments or railcars, as to which STRC seeks to collect the Demurrage Charges, would be tendered, notified, placed (actually or constructively) or delivered to Fore River at any given time.

ANS. International Paper at Bucksport, ME or International Paper at Rileys, ME was the party that determined how many shipments would be tendered to Fore River.

10. Identify the frequency with which STRC provided switching services at Fore River's facility (i.e., delivered and removed railcars to and from Fore River's facility) during the time period(s) in which STRC alleges that the Demurrage Charges accrued.

ANS. See May 26, 2006 letter from Mike Bostwick to Mike Cella indicating that as of May 2006, Pan Am was providing switching and rail movement services approximately three days per week. During this period, Springfield Terminal offered Fore River seven day a week switching. By e-mail dated June 1, 2006 from Mike Cella, Fore River rejected this request (see attached e-mail). Normal switching was three days per week. With an 18 car siding at Fore River, there was plenty of capacity on the rail side if Fore River had the capacity at their warehouse to throughput all the volume International Paper was providing Fore River. Railcars were processed through the Fore River facility. In May 2006, Pan Am performed 21 switches at Fore River. Since Fore River has an inbound throughput capacity of 18 railcars per day, it is evident that Fore River could have achieved a total of 378 railcars, thereby alleviating a large portion of the backlog. However, records show Fore River achieved a throughput of only 243 railcars during the month of May, 2006.

11. Identify, state and describe any policy or practice on the part of STRC relating to the manner of removing railcars from Fore River's facility, whether on a first in/first-out or any other basis, during the time period(s) in which STRC alleges that the Demurrage Charges accrued.

ANS. As this was long term storage of paper rolls, any car would do for a switch but some cars were ordered car specific by Fore River. Springfield Terminal wanted to bring 18 cars per switch which is the siding capacity but Fore River would only take particle switches as Fore River needed to clear out space before bringing new product into the warehouse. This limited the ability to work-off the backlog of cars and thus diminish the demurrage that was accruing.

12. State whether any railcar, as to which STRC seeks to collect the Demurrage Charges, was subject to a storage-in-transit arrangement at the same time that STRC contends that demurrage was accruing. If your answer is affirmative, identify the railcar(s), the amount of the storage-in-transit charges, and the other party to the storage-in-transit arrangement.

ANS. No cars were on SIT (Storage in Transit) at the same time accruing demurrage.

DATED at *N. Billeverie*, Massachusetts this *21<sup>st</sup>* day of May, 2009.



Michael Bostwick, Sr. Vice President  
Marketing & Sales  
Pan Am Railways/Springfield Terminal  
Railway Company

*Dated June 1, 2009*



Michael Bostwick  
Sr. Vice President  
Marketing & Sales

COMMONWEALTH OF MASSACHUSETTS

*Middlesey*, ss.

June 1, 2009

Then personally appeared Michael Bostwick and made oath that he has read the above and knows the contents thereof, and that the same is true of his own knowledge, except the matters stated to be on information and belief, and that as to those matters, he believes them to be true.

Before me,

*Pamela J. Primeau*  
Notary Public/Attorney-at-Law

